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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
08/917,480	08/26/1997	SEAN R. WAKAYAMA	R-8767	4794
826	7590	06/28/2006	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			DINH, TIEN QUANG	
			ART UNIT	PAPER NUMBER
			3644	

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**GROUP 3600**

**BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES**

Application Number: 08/917,480  
Filing Date: August 26, 1997  
Appellant(s): WAKAYAMA, SEAN R.

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Guy Gosnell  
For Appellant

**EXAMINER'S ANSWER**

This is in response to the appeal brief filed 4/17/06 appealing from the Office action mailed 12/19/02.

**(1) Real Party in Interest**

A statement identifying by name the real party in interest is contained in the brief.

**(2) Related Appeals and Interferences**

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

**(3) Status of Claims**

The statement of the status of claims contained in the brief is correct.

**(4) Status of Amendments After Final**

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

**(5) Summary of Claimed Subject Matter**

The summary of claimed subject matter contained in the brief is correct.

**(6) Grounds of Rejection to be Reviewed on Appeal**

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

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**(7) Claims Appendix**

The copy of the appealed claims contained in the Appendix to the brief is correct.

**(8) Evidence Relied Upon**

2,549,045	Ashkenas	4/1951
5,088,661	Whitener	2/1992
4,796,192	Lewis	1/1989

**(9) Grounds of Rejection**

The following ground(s) of rejection are applicable to the appealed claims:

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-5, 7-15, 17, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ashkenas in view of Whitener.

Claims 6, 16, and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ashkenas as modified by Whitener in view of Whitener.

**(10) Response to Argument**

In response to the applicant's arguments on the term "the", please note that "the bending moment" was not provided with proper antecedent basis. Therefore, the rejection under 35

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U.S.C. 112, 2<sup>nd</sup> paragraph was made. The rejection still stands since “the bending moment” still lacks antecedent basis. The definition provided (Merriam-Webster’s College Dictionary) by the applicant is appreciated but it has not overcome the 35 U.S.C. 112, 2<sup>nd</sup> paragraph rejection.

As for the arguments by the Applicant that “the Examiner is not suggesting a combination of these references”, the applicant misunderstood what the Examiner was saying. The Examiner used the teaching of Whitener and Lewis to teach that the control surfaces on wings are positioned at predetermined positions for certain flights configurations and are used to reduce bending moments are well known in the art. Although, Ashkenas is silent on the control surface configuration system in which the control surfaces are selectively reconfigurable to a plurality of predetermined positions as required to optimize the spanwise force distribution across the wing for each of a plurality of different flight configurations/conditions including a low speed flight condition in which a first selected one of the control surfaces are positioned to increase a local coefficient of lift and the other control surfaces are positioned to control pitch trim, Whitener clearly teaches that control surfaces on wings (such as those of Ashkenas) can achieve these results. Furthermore, Lewis was used to show that Ashkenas control surfaces can be used to reduce bending moments. The Examiner does not suggest moving the parts of Whitener or Lewis on the Ashkenas’ flight system.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge

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generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992).

In this case, the Whitner and Lewis references are used to show Ashkenas' flight system is capable of reducing of bending moments and is selectively reconfigurable to a plurality of predetermined positions as required to optimize the spanwise force distribution across the wing for each of a plurality of different flight configurations/conditions including a low speed flight condition in which a first selected one of the control surfaces are positioned to increase a local coefficient of lift and the other control surfaces are positioned to control pitch trim.

The Examiner maintains the inherency arguments since the spanwise force distribution across the wing is optimized for the maneuverability of the aircraft. The secondary references do teach "predetermined position, which in combination, optimize the spanwise force distribution across the wing for each of the plurality of different flight conditions." Please see the arguments above and in the previous office action.

Finally, the Examiner would like to point out that the Examiner has used the decision by the board of appeal as a road map in treating the respected case. In the decision by the board (paper 15), the board suggested that the Examiner may wish to consider computer-based flight management systems, aircraft operating manuals, and pilot operating handbooks. The Examiner has done so by introducing the Whitner and Lewis to show that the claimed subject matters are well known in the art and it would have been obvious to one skilled in the art to have "combined" the references. For the above reasons, it is believed that the rejections should be sustained.

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**(11) Related Proceeding(s) Appendix**

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

Respectfully submitted,

*T. W. D.*

TD

June 23, 2006

Conferees

CJ *CJ*

JWD

*JWD*